

Application No. 09/944668
Page 8

Amendment
Attorney Docket No. S63.2B-9867-US01

Remarks

This Amendment is in response to the Office Action dated March 2, 2005. In the Office Action claims 1-4, 6-10, 14, 15, 30, 33, 34, 38, 41, 42, 44, and 45 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al. Claims 11-13, 35-37, and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al. These rejections are addressed under headings consistent with the headings of the Office Action. Claims 1 and 30 have been amended. No new matter has been added.

35 USC § 102

In the Office Action claims 1-4, 6-10, 14, 15, 30, 33, 34, 38, 41, 42, 44, and 45 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al. Applicant has amended claim 1 to recite "a frangible temporary strut". Kocur teaches frangible bands or the like rather than a strut that is frangible as taught in claims 1 and 38. A strut is known in the art as a structural element used to support a framework. The frangible bands of Kocur do not provide support to a framework, and must not be viewed as equivalent to a strut.

Claim 30 has been amended to recite a frangible member "at least partially constructed of metal". Kocur does not teach this limitation.

For at least the above reasons, independent claims 1, 30, and 38 and claims 2-4, 6-10, 14, 15, 33, 34, 41, 42, 44, and 45 dependent thereof overcome the 102 rejection.

Applicant respectfully requests that the 102 rejection in light of Kocur be withdrawn.

35 USC § 103

In the Office Action, claims 11-13, 35-37, and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al.

Claim 38 teaches a temporary strut that breaks upon the application of a predetermined outward pressure and amended claim 1 recites a frangible temporary strut. As asserted above, Kocur does not provide the teaching of a temporary strut as claimed; nor can one

Application No. 09/944668
Page 9

Amendment
Attorney Docket No. S63.2B-9867-US01

look to Lock et al to find this teaching as Lock teaches strips connecting sides of a stent. The strips of Lock are not struts as they are not a structural element used to support a framework. Instead, the strips act on the stent and struts of Lock to restrain expansion. For at least this reason, it is asserted that claims 11-13 and 39-40 dependent upon amended independent claims 1 and 38 are in condition for allowance.

Claim 30 has been amended to recite "the frangible restraining member at least partially constructed from metal". As asserted above, Kocur does not provide this teaching; nor can one look to Lock et al to find this teaching. For at least this reason, it is asserted that claims 35-37 dependent upon amended independent claim 30 are in condition for allowance.

Applicant respectfully requests that the 103(a) obviousness rejection of claims 11-13, 35-37, and 39-40 be withdrawn.


CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 1-15, 30, and 33-45 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: August 11, 2005

By: 
Brendan C. Babcock
Registration No.: 50705

6109 Blue Circle Drive, Suite 2000
Minnetonka, MN 55343-9185
Telephone: (952) 563-3000
Facsimile: (952) 563-3001
F:\wpwork\lcb\09867us01_amd_20050803.doc